



PUBLIC NOTICE

Federal Communications Commission
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DA 03-2524

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**DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF
FIBERNET, INC., AND ITC^ DELTACOM COMMUNICATIONS, INC. TO WELSH,
CARSON, ANDERSON & STOWE VIII., TOGETHER WITH CERTAIN AFFILIATES**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-165

On July 9, 2003, ITC^DeltaCom, Inc. (ITC), Interstate FiberNet, Inc. (FiberNet), ITC^DeltaCom Communications, Inc. (DeltaCom), and Welsh, Carson, Anderson & Stow VIII, L.P., WCAS Capital Partners III, L.P., and WCAS Information Partners, L.P. (together, Welsh Carson) (ITC, FiberNet, DeltaCom, and Welsh Carson, together, Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ for consent to transfer control of FiberNet and DeltaCom to Welsh Carson.²

Applicants assert that the proposed transaction is eligible for presumptive streamlined treatment under section 63.03(b)(2)(ii) of the Commission's rules because the transferee will have a market share in the interstate interexchange market of less than 10 percent, the transferee will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction, and the Applicants are a dominant carrier and a non-dominant carrier that provides services exclusively outside the geographic area where the dominant carrier is dominant.³

ITC offers local, long distance and enhanced services to retail business customers. ITC also offers wholesale services, including operator services and directory assistance, PRI local connections, and broadband transport. ITC's 10,000 route-miles of fiber-optic backbone extends

¹ 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² DeltaCom also holds satellite earth station licenses, and the Applicants are concurrently filing an application for consent to transfer control of these licenses. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

³ *See* Letter from Ruth Milkman, Lawler, Metzger & Milkman, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-165 (filed July 23, 2003).

to 10 states⁴ and includes 188 points of presence. ITC has 12 voice switches for local and long distance offerings, as well as local facilities collocated in incumbent local exchange central offices, and provides local services in 35 local markets. In the first calendar quarter of 2003, ITC also began offering bundled local and long distance services to residential customers.

ITC's subsidiaries DeltaCom and FiberNet, which are headquartered in Georgia, together own or manage approximately 10,000 route-miles of a fiber-optic network covering portions of ten states in the southern United States. Other Welsh Carson subsidiaries (together, BTI Operating) provide facilities-based competitive local exchange services in the southeast United States.⁵ BTI Operating offers business customers a variety of telecommunications and information services including local dial tone, long distance, frame relay and private line, dedicated, dial-up or DSL Internet access, and advanced ancillary services. Its network operations extend through a 13-state footprint with 4,400 route-miles of fiber-optic facilities and include 81 points of presence, 25 frame relay switches, 4 ATM switches, 14 local voice switches and 4 long distance voice switches.⁶ BTI Operating's fiber-optic facilities are concentrated in the eastern coastal states and stretch from the southern tip of Florida to New York, although a significant number of BTI Operating's switching facilities and fiber POP sites are located in North Carolina. BTI Operating also provides local voice services through resale of incumbent local exchange carrier services and UNE-Platform in several states in addition to those states where BTI Operating has its own network operations.

The Welsh Carson entities are affiliates of Welsh, Carson, Anderson and Stowe, a private equity investment firm that has managerial and financial expertise in numerous fields including telecommunications. The Welsh Carson entities that are the transferees are not commonly owned, but are ultimately managed and controlled by the same group of individuals. Welsh Carson currently holds approximately 49.3 percent of the common stock of ITC. Welsh Carson, through various limited partnerships, holds majority interests in two communications companies subject to FCC jurisdiction, in addition to its interest in BTI. Welsh Carson is a majority shareholder in the publicly traded Centennial Communications Corporation, a provider of wireless rural telephone systems in the continental United State, and a provider of integrated communications services in the Caribbean, including the islands of Puerto Rico and the U.S. Virgin Islands. Welsh Carson is a majority investor in Valor Telecommunications L.L.C., an independent local exchange offering services in primarily rural exchange areas within the state of Texas, Oklahoma and New Mexico. Valor also provides long distance, wireless and

⁴ The states are Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas.

⁵ Welsh Carson owns a majority of shares (approximately 70% on a fully diluted basis) of BTI Telecom Corp. (BTI), which through its subsidiaries, Business Telecom, Inc. and Business Telecom of Virginia, Inc. (together, BTI Operating), is a regional facilities-based competitive local exchange, long distance and international service provider headquartered in North Carolina.

⁶ The jurisdictions are Alabama, Delaware, the District of Columbia, Florida, Georgia, Maryland, New Jersey, New York, Pennsylvania, South Carolina, North Carolina, Tennessee, and Virginia.

information services.

Welsh Carson and ITC have entered into an agreement whereby Welsh Carson's majority-owned BTI and its subsidiaries will join the ITC group of corporate subsidiaries. To that end, BTI will merge with a newly created subsidiary of ITC, with BTI surviving. Thus, BTI will become a subsidiary of ITC. Welsh Carson's debt and equity interests in BTI will be exchanged for or converted into common stock and warrants of ITC, and Welsh Carson and certain of its affiliates will invest approximately \$35 million in ITC in exchange for Series B preferred stock of ITC. Immediately following the consummation of the proposed transaction Welsh Carson will own stock of ITC controlling a majority of the outstanding stockholder votes pertaining generally to matters presented for vote by the holders of ITC's common stock.⁷ Thus, the proposed transaction will result in a transfer to Welsh Carson of ultimate control of FiberNet and DeltaCom. Because Welsh Carson currently controls BTI and will continue to have ultimate control of BTI through its ownership of ITC after consummation of the transaction, the merger of BTI with an ITC subsidiary will result in a *pro forma* transfer of control of BTI Operating. Following consummation of the proposed transaction, Applicants state that DeltaCom, FiberNet, and BTI Operating (the Companies) will continue to compete in the local and long distance retail and wholesale telecommunications markets. Although the local and long distance operations of the Companies overlap in some states, each company will continue to face competition from incumbent local exchange carriers, such as BellSouth and Verizon, larger long distance competitors, and other providers of communications services, such as wireless and cable providers.

Applicants state that the proposed transaction is in the public interest, convenience, and necessity. Applicants assert that FiberNet and DeltaCom, and their customers, will benefit from the improved capitalization of ITC, which will help ensure continuity of service and enhance FiberNet's and DeltaCom's ability to offer a broader range of innovative products and services to customers. The Applicants expect that the proposed transaction will generate annualized cost savings for the combined company of approximately \$40 to \$60 million over a three-year period, the majority of which is expected to be achieved by the end of the first year. Applicants assert that the proposed transaction will strengthen the ability of FiberNet and DeltaCom to offer services in competition with other providers, including the incumbent local exchange carriers, in their operating areas. Moreover, the Applicants assert this proposed transaction will promote competition in the local exchange, interexchange, and international telecommunications markets, which will serve the public interest.

⁷ See Letter from Jonathan M. Rather, Chief Financial Officer, Welsh Carson to Marlene H. Dortch, Secretary, Federal Communications Commission, WC 03-165 (filed July 22, 2003) (providing post-transaction ownership percentages of Welsh Carson entities in ITC stock).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.⁸ Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31st day after the date of this notice.⁹ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁸ See 47 C.F.R. § 63.03(a).

⁹ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov;
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov;
- (4) Jeremy Miller, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: jemiller@fcc.gov;
- (5) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; email: iellis@fcc.gov;
- (6) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: ckillion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, or Dennis Johnson at (202) 418-0809.

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